1942

Book Review. Benjamin, R.M., Administrative Adjudication in New York

Ralph F. Fuchs
Indiana University School of Law

BOOK REVIEWS

ADMINISTRATIVE ADJUDICATION IN NEW YORK. Report of ROBERT M. BENJAMIN[1] as Commissioner under Section 8 of the Executive Law. Officially published, 1942. Pp. 369.

For the first time in the study of American administrative law, this highly realistic and sane report lays bare the regulatory procedures of a state and sets forth comprehensive proposals for their improvement. The report parallels that of the Federal Attorney General's Committee.[2] To the extent that it is followed by reports of similar merit in other representative states,[3] the means for a truly discriminating attack upon the problems of state administrative procedure will for the first time be provided. Mr. Benjamin's work is thorough and unpretentious, filled with valuable detail and free both of traditional bombast and of decorative language. Read from cover to cover, it is dull to the uninitiated; but used as a source of guidance, it yields illumination and wise counsel. Description and discussion of the State's administrative procedures and an account of judicial decisions relating to them are both included.

Mr. Benjamin specifically eschews general legislation as a means of reforming administrative procedure. "In this field . . . general principles, valuable as they are, are valuable primarily as critical criteria. They do not solve the essential problems of method."[4] A unified code of administrative procedure is considered neither feasible nor desirable.[5]

The purpose of administrative jurisdiction in a particular field must always be kept in mind, Mr. Benjamin thinks, in effecting procedural changes in that field.[6] In response to different needs and purposes legitimate diversities of procedure have arisen even in such conventionally unified procedural categories as revocation of licenses;[7] and the diversities extend through all stages of the administrative process.[8] It is to details of procedure, then, that Mr. Benjamin addresses himself.

1. Member of the New York Bar. Mr. Benjamin was appointed by Governor Lehman in 1939 to undertake a complete investigation of administrative rulings, in which Mr. Francis E. Horan as Counsel and eight Associate Counsel also participated.

2. SEN. DOC. No. 8, 77th Cong., 1st Sess. (1941).

3. Officially sponsored investigations are reported to be under way in a number of states at the present time. Probably few, if any, of them are as adequately financed, even in relation to the size of the task to be performed, as the New York study appears to have been.

4. p. 10.

5. p. 35.

6. p. 12.

7. p. 16.

8. pp. 25-35.

The organization of the report, however, is "horizontal," with specific situations coming in by way of illustration, rather than "vertical." Separate memoranda, dealing with the procedures of particular agencies, are promised.[9]

There should be little opposition to most of Mr. Benjamin's carefully-considered proposals for improvement in administrative procedures, for they are advanced with full consciousness of the importance of both efficiency and fairness in the fields of administrative action to which they relate. Summary suspension, rather than revocation, of licenses where the public interest demands immediate protection, followed by hearings looking toward revocation,[10] and the substitution of the substantial evidence rule for the "legal residuum rule" of the *Knickerbocker Ice Co.* case[11] as the test of the sufficiency of the evidence supporting an administrative finding of fact[12] are examples of practices and reforms advocated by Mr. Benjamin which seem obviously sound. A few of the procedural recommendations do not possess similar validity for this reviewer;[13] but in general they are of less significance than those that do.

Most controversial among Mr. Benjamin's recommendations is his proposal for separating the State Labor Relations Board into two agencies, one of which would possess only the adjudicating function while the other carried on investigating, negotiating, and litigating functions.[14] To minimize conflicts of policy between the two agencies both should be headed by boards having the same number of members appointed simultaneously for corresponding terms.[15] Mr. Benjamin disclaims adherence to any general principle of separating "prosecuting" from "judicial" functions,[16] but, here as elsewhere, insists that solutions should be based upon specific, practical considerations. These considerations with respect to the Labor Relations Board are: (1) the desirability of eliminating actual "implicit," though unintended, pressure upon respondents to consent to the "adjustment" or settlement of proceedings brought by the same Board that will pass upon the charges if the matter goes to hearing; (2) the desirability of doing away with

9. p. 8.
10. p. 105.
11. 218 N. Y. 435, 113 N. E. 507 (1916).
12. p. 190.
13. The view that subpoenas should be made available as of course to the parties to administrative proceedings (p. 163) seems, *e.g.*, to involve an undesirable surrender of control by administrative agencies over the use made of their processes.
14. p. 48 *et seq.*
15. If this device for producing correlation between the two agencies cannot be adopted, the separation, in Mr. Benjamin's opinion, should not be effected. p. 48.
16. p. 45.

both the "appearance of prejudgment" and the self-consciousness on the part of Board members which spring from combining prosecuting and judging functions in a field of administration "in which strong feelings are still involved;" and (3) the need for greater participation than there is at present by men of board-member calibre in negotiations looking toward settlements—participation that would be secured if the members of the present Board who tend to hold aloof from cases until they are argued before them, were relieved by a second board charged with performing the initiating and pre-hearing functions. Internal separation within the Board cannot be wholly adequate, since the Board members, General Counsel, and Executive Secretary must keep in touch with important cases from the beginning in order to discharge their responsibility.

Mr. Benjamin's judicious argument, with its recognition of the force of opposing contentions,[17] does not make out a conclusive case, since it is equally valid to weigh the relevant factors differently and thus reach an opposite result. But neither would that result be conclusive. If Mr. Benjamin's view should prevail in New York, those on the outside who disagree with it would nevertheless welcome the resulting demonstration of the working of such an arrangement.

Mr. Benjamin's appreciation of the complexity of the tasks confronting administrative agencies and his tendency to repose trust in them are demonstrated by his discussion of rule-making and of judicial review of administrative decisions. Incidentally Mr. Benjamin's analysis of the judicial review problem[18] is one of the clearest and most helpful in the books and places all students of the subject much in his debt. Most educative for the public and the legal profession, however, will be his sound and discriminating discussions of the use of matter not in the administrative record in arriving at decisions,[19] of the process of reaching decisions through interrelated personnel,[20] and of the desirable methods of selecting trial examiners,[21] in which full account is taken of the numerous, varied situations that arise in agencies of different composition, having different functions to perform.

From now on Mr. Benjamin's New York report will be required reading for all who wish to comprehend administrative processes thoroughly.

RALPH F. FUCHS*

17. Undivided responsibility for results may produce a more clearcut policy than divided responsibility under which one agency can pass a difficult problem on to another (p. 51). The present Board members have not actually prejudged the cases coming before them (p. 58).

18. pp. 326-368.

19. p. 206 *et seq.*

20. p. 221 *et seq.*

21. p. 268 *et seq.*

* Professor of Law, Washington University School of Law.